

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

GERALD L. ROSS

PETITIONER

v.

CIVIL ACTION NO. 5:09cv97-DCB-MTP

RON KING

RESPONDENT

ORDER

This cause came on this date to be heard upon the Report and Recommendation of the United States Magistrate Judge, after referral of hearing by this Court, and there being no objections thereto filed by either party, and the Court, having fully reviewed the Report and Recommendation of the United States Magistrate Judge entered in this cause, and being duly advised in the premises, finds that said Report and Recommendation should be adopted as the opinion of this Court.

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253©, the Court further finds that the petitioner has failed to show (1) that reasonable jurists would find this Court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its

procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).¹

The Court therefore denies a certificate of appealability.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of United States Magistrate Judge Michael T. Parker be, and the same is hereby, adopted as the finding of this Court, and that Respondent Ron King’s Motion to Dismiss for Failure to Exhaust [11] is granted and Petitioner’s Petition for Writ of Habeas Corpus [1] is DENIED and dismissed without prejudice to his right to timely re-file the Petition, upon exhaustion of his state court remedies.

¹ Rule 11 of the Rules Governing §§ 2254 and 2255 Cases, as amended effective on December 1, 2009, reads as follows:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

FURTHER ORDERED that a certificate of appealability is
DENIED.

A separate judgment will be entered herein in accordance with
this Order as required by Rule 58 of the Federal Rules of Civil
Procedure.

SO ORDERED, this the 26th day of May, 2010.

s/David Bramlette
UNITED STATES DISTRICT JUDGE